

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARIO RINALDI,

Plaintiff,

-against-

SCA LA GOUTTE, D'OR, et al.,

Defendants.  
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16-cv-1901 (VSB)

**ORDER**

VERNON S. BRODERICK, United States District Judge:

There is a hearing or oral argument on the parties' *Daubert* motions scheduled for July 15, 2021. The parties should be prepared to present oral argument on their *Daubert* motions. I find that a hearing with expert witness testimony is unnecessary at this time. At oral argument, the parties should be prepared to address questions related to their motions, including the following questions:

*Questions for Plaintiff*

1. Is Plaintiff seeking compensatory damages based solely on the valuation of "lost business opportunity" conducted by expert Pamela O'Neill?

- a) O'Neill's report also calculates damages based on brand valuation. (O'Neill Rep.

19.)<sup>1</sup> In the joint pre-trial order, Plaintiff indicates that he seeks \$3,700,000 in compensatory damages based on industry and economic review, projections and market outlook; a Discounted Cash Flow ("DCF") analysis under the Income Approach; and a discount rate of 14.5 percent. (Doc. 114 at 10.) This aligns with

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<sup>1</sup> "O'Neill Rep." refers the expert report of Pamela M. O'Neill, dated November 20, 2018, which was emailed to the Court as part of the parties' pre-trial submissions.

O'Neill's "lost business opportunity" calculations. Is Plaintiff not seeking damages under the brand valuation approach?

- b) Will O'Neill's expert testimony discuss unpaid commissions?
- 2. Did Plaintiff anticipate selling Paul Goerg champagne through his potential business?
- 3. When were the projections for Plaintiff's potential business, which O'Neill relied on, (*see* O'Neill Rep. 5), prepared?
  - a) Has O'Neill spoken with anyone from Oberon Securities who prepared the projections?
  - b) Are the projections for Plaintiff's potential business based on Plaintiff selling Paul Goerg champagne?
- 4. What is the basis for Plaintiff seeking at least € 200,000 in unpaid commissions? (*See* Doc. 114 at 10.) How did Plaintiff calculate the € 200,000 in unpaid commissions, including the time period such commissions would have been earned?
- 5. Does a rebuttal expert need to provide independent damages calculations or models of his or her own? If so, what is your support for that proposition?
- 6. Isn't expert Mandeep Trivedi's discussion of a lack of "causal link" merely a way of explaining that O'Neill failed to consider the certain factors, such as Plaintiff's historical sale performance, in conducting her valuation? (*See* Trivedi Rep. 32–33.)<sup>2</sup>

#### *Questions for Defendants*

- 1. Isn't it fairly common practice for experts to rely on data from third parties?
- 2. Aren't experts permitted to rely on data, documents, and/or information that may not be admissible?

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<sup>2</sup> "Trivedi Rep." refers to the expert report of Mandeep Trivedi, dated January 10, 2019, which was emailed to the Court as part of the parties' pre-trial submissions.

3. Can the concerns raised by your *Daubert* motion, including whether Plaintiff's potential business was feasible or contemplated by the contract, be dealt with through jury interrogatories? If not, why not?

SO ORDERED.

Dated: July 13, 2021

New York, New York

A handwritten signature in black ink, reading "Vernon Broderick". The signature is written in a cursive, flowing style with a large initial "V".

Vernon S. Broderick  
United States District Judge